

REMARKS

Claims 1, 3, 4, and 10-13 are pending in the present application. In this response, no claims have been cancelled, amended, or added. Accordingly, claims 1, 3, 4, and 10-13 remain under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claims Rejections Under 35 U.S.C. § 103(a)

A. Claims 1, 3, 4, and 10-13 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. 5,962,532 to Campbell and Ann Jones et al. ("Ann Jones") (Clinical toxicology, abstract only) in view of Wholehealthmd and U.S. 5,910,512 to Conant. The Office states that a skilled artisan would have expected to reduce burning caused by the capsaicin of Campbell by: 1) desensitizing with an anesthetic as well as 2) removing the burning pain caused by capsaicin from the skin with vegetable oils as taught by Ann Jones and Conant because Wholehealthmd suggests removing capsaicin to avoid burning and stinging.

Applicants disagree that a case of obviousness has been established on the basis that there is no logical connection between Campbell and Wholehealthmd. Campbell teaches prior administration of anesthesia to the site of capsaicin administration to reduce capsaicin's side effects. Campbell also describes the administration of narcotics to treat breakthrough pain that occurs despite the use of an anesthetic (see, e.g., column 2, lines 38-43; and column 4, lines 46-51 of Campbell). These solutions to the problem of capsaicin side-effects are also recognized by the Office on page 4 of the instant Office Action.

Wholehealthmd clearly describes a different method of handling the burning side-effects of capsaicin. In that reference, soapy water is used to try to wash off the capsaicin on the skin. It is submitted that one of skill would not reasonably expect that simple washing, as described by Wholehealthmd, would resolve the burning side-effects when harsher methods, i.e., use of anesthetics and narcotics, are being used by Campbell. Further, Applicants have previously provided evidence that soapy water fails to solubilize capsaicin in the claimed amounts (see

Appendix A of the Supplemental Amendment filed on November 9, 2005), and thus would not effectively remove capsaicin from the skin. In another important respect, Applicants provide that one of skill would not look to wash capsaicin from the skin, as taught by Wholehealthmd, because Campbell focuses on counteracting the burning and stinging by administering additional drugs, i.e., anesthetics and narcotic agents.

Ann Jones and Conant appear to have been added for their disclosure of oils and other solvents of capsaicin, and thus, need not be discussed in detail here.

At least in view of the above, withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

B. Claims 1, 3, 4, and 10-13 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over US 2002/0002406 Robbins et al. (PTO-1449 of 3/14/08) and Ann Jones et al. in view of Wholehealthmd and U.S. 5,910,512 to Conant. The reasoning for the rejection is the same as that provided in part A, but Robbins et al. has been substituted for Campbell.

Again, Applicants disagree that a case of obviousness has been established on the basis that there is no logical connection between Robbins et al. and Wholehealthmd. Robbins et al. teaches prior administration of anesthesia to the site of capsaicin administration to reduce capsaicin's side effects (e.g., see paragraphs 11 and 12 of Robbins et al.). Robbins et al. also describes the administration of narcotics to treat breakthrough pain that occurs despite the use of an anesthetic (see, e.g., paragraph 20 of Robbins et al.). Contrary to the Office's assertion on page 5 of the instant Office Action, Robbins et al. does not describe capsaicin removal.

Wholehealthmd clearly describes a different method of handling the burning side-effects of capsaicin. In that reference, soapy water is used to try to wash off the capsaicin on the skin. It is submitted that one of skill would not reasonably expect that simple washing, as described by Wholehealthmd, would resolve the burning side-effects when harsher methods, i.e., use of anesthetics and narcotics, are being used by Robbins et al. Further, Applicants have previously provided evidence that soapy water fails to solubilize capsaicin in the claimed amounts (see

Appendix A of the Supplemental Amendment filed on November 9, 2005), and thus would not effectively remove capsaicin from the skin. In another important respect, Applicants provide that one of skill would not look to wash capsaicin from the skin, as taught by Wholehealthmd, because Robbins et al., in the same manner as Campbell, focuses on counteracting the burning and stinging by administering additional drugs, i.e., anesthetics and narcotic agents.

Here Ann Jones and Conant also appear to have been added for their disclosure of oils and other solvents of capsaicin, and thus, need not be discussed in detail.

Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) is respectfully requested.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 524522000500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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